PUBLIC PROSECUTOR

v.

LING YEW MEE

HIGH COURT MALAYA, PENANG
CHONG SIEW FAI J
[CRIMINAL REVISION NO. 5 OF 1989]
14 NOVEMBER 1989

CRIMINAL PROCEDURE: *Bail - Accused failed to attend - Sureties liability - Discretion of Court - Section 404(v) of the Criminal Procedure Code (CPC).*

The accused was released on bail in the sum of RM8000, the two sureties being S1 and S2; the accused failed to turn up in Court on the adjourned date. The Sessions Court Judge ordered a total sum of RM12,000 to be paid - RM8,000 by S1 and RM4,000 by S2.

The case discussed the issues of bail penalty in circumstances where an accused fails to appear in Court.

Held:
[1] Under s. 404(v) of the CPC the Court has the discretion to remit any portion of the penalty and enforce payment of part thereof. The discretion must be exercised judicially according to established principles and the burden of satisfying the Court of relief against full penalty or that the full sum should not be impugned lies with the surety.

[2] In relation to S1, sufficient cause has been shown against imposition of penalty - see *Ramlee v. PP* [1969] 1 MLJ 42.

[3] In relation to S2, a penalty of RM4,000 was imposed as the explanation in relation to the steps taken by S2 to secure the attendance of the accused was unsatisfactory.

[Order accordingly.]

Cases referred to:
Valliamai v. PP [1962] MLJ 280
Ramlee & Anor. v. PP [1979] 1 MLJ 42

Legislation referred to:
Criminal Procedure Code, s. 404(v)

For the prosecution - Abdul Rahman bin Sebeli, Deputy Public Prosecutor
For the 2 sureties - Wong Sing Nang; M/s. Wong & Co.

JUDGMENT

Chong Siew Fai J:

In Criminal Case No. SSC/1/87 the accused was released "on bail in the sum of RM8,000 in 2 sureties ...".

The 2 sureties Ling Yew Huat and Lau Yioh Hie entered into a bail bond in which they bound themselves jointly and severally to forfeit the sum of RM8,000 in the event of the accused failing to appear in Court.

The accused having failed to turn up in Court on the adjourned date (17 April 1989), notices were issued to the sureties to show cause why the sum should not be paid. In the result, the learned Sessions Court Judge ordered a total sum of RM12,000 to be paid that is in the case of *Ling Yew Huat* RM8,000 and in the case of *Lau Yioh Hie* RM4,000.

Ordering the payment of RM12,000 clearly exceeded the amount fixed in the bail bond and was erroneous. The mistake might well have been caused or contributed to by the fact that separate notices each stating the sum of RM8,000 were issued to the 2 sureties and that they appeared and were dealt with in Court on different dates.

Where an accused fails to appear in Court, before ordering payment of full penalty the Court should consider the matter in 2 stages:

1. Has sufficient cause been shown against forfeiture or imposition of penalty?
2. If not, are the circumstances such that the whole sum of the penalty ought to be enforced?

Valliamai v. Public Prosecutor [1962] MLJ 280; *Ramlee & Anor. v. Public Prosecutor* [1969] 1 MLJ 42.

Under s. 404(v) of the Criminal Procedure Code, the Court has the discretion to remit any portion of the penalty and enforce payment of part thereof. The discretion, of course, must be exercised judicially according to established principles. The burden of satisfying the Court of relief against full penalty or that full sum should not be imposed lies with the surety. It is for him to lay before the Court the evidence of want of culpability. The effort or steps taken by a surety to secure or ensure the accused's appearance in Court should be considered with the two stages stated above in mind.

The record of proceedings in the criminal case in question shows that in the case of *Lau Yioh Hie* his evidence, which was unchallenged, was that a few days before 17 April 1989 he kept reminding the accused to go to Court and the accused promised him that he (the accused) would do so, that Lau knew of the accused's failure to attend Court a few days after 17 April 1989 and that thereupon he informed the accused to go to Court. Though unlike, *Ramlee & Anor. v. Public Prosecutor*, (*supra*), Lau did not take step to ensure the attendance of the accused on 17 April 1989 as he was not in Sibu, the accused had promised him that he would attend. In my opinion, sufficient cause has been shown against imposition of penalty. *Ramlee & Anor. v. Public Prosecutor*, (*supra*). Lau had shown reasonable attempt to cause the accused to attend Court. Lau also said that the accused went to the Court registry on the 3rd day but was informed that the case had been fixed for another date. I quash the order of the Sessions Court Judge forfeiting the bond and order that the sum RM4,000 be refunded to Lau.

In the case of *Ling Yew Huat*, the explanation is far less satisfactory. There is no evidence as to what he had done to ensure or secure the attendance of the accused in Court on 17 April 1989. He said he could not come back to Sibu in time as he had to be in Sarikei because of someone's death. But there is nothing showing what he had done prior to that; nor what he would have done had he been in Sibu on the 17th. However, some sense of responsibility had been demonstrated by this surety in that he attended Court ahead of the adjourned date of 11 July 1989 that is on 4 July 1989. Also, this is not a case of the accused absconded or failed to turn up in Court at all. Having regard to all the circumstances, I consider it fair if Ling Yew Huat is ordered to pay a penalty of RM4,000.

I understand that both sureties had paid in full the respective sums imposed upon them by the Sessions Court. In the circumstance, I order that the amount RM4,000 imposed and paid by Lau Yioh Hie be returned to him and that out of the amount of RM8,000 imposed and paid by Ling Yew Huat, a sum of RM4,000 be refunded to him.

Also found at [1990] 2 CLJ 286